

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARLENE WARD and DONALD WARD,

Plaintiffs,

-against-

MEMORANDUM & ORDER
11-CV-4295 (JS) (ARL)

JAIRAM RAMKALAWAN and SHAWNA
RAMKALAWAN,

Defendants.

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APPEARANCES

For Plaintiffs: Fred R. Rosenthal, Esq.
Jonathan C. Macri, Esq.
Lauren B. Sutton, Esq.
Parker Waichman Alonso L.L.P.
6 Harbor Park Drive
Port Washington, NY 11050

For Defendants: David A. Pincus, Esq.
Feldman, Kramer & Monaco, P.C.
330 Vanderbilt Motor Parkway
Hauppauge, NY 117788

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge Arlene R. Lindsay's Report and Recommendation ("R&R"), issued on February 11, 2013. For the following reasons, the Court ADOPTS this R&R in its entirety.

BACKGROUND

Judge Lindsay's R&R provides a detailed procedural history of this case. Briefly, Plaintiffs Darlene Ward and Donald Ward (collectively "Plaintiffs") commenced this personal injury action on September 8, 2011 against Defendants Jairam

Ramkalawan and Shawna Ramkalawan (collectively "Defendants"). Plaintiffs allege that Darlene Ward sustained injuries when she slipped and fell on Defendants' walkway.

Plaintiffs served the Complaint on Defendant Jairam Ramkalawan on September 18, 2011 and on Defendant Shawna Ramkalawan on September 19, 2011. Defendants failed to timely answer or otherwise appear in this action. Plaintiffs then twice filed for, and were denied, a Certificate of Default.

Finally, on June 13, 2012, Plaintiffs properly filed for entry of a Certificate of Default together with an Affidavit of Service and the Clerk of the Court entered a default against Defendants. (Docket Entries 11-12.) On June 18, 2012, Plaintiffs moved for a default judgment against Defendants. (Docket Entry 13.) On July 20, 2012, David A. Pincus, Esq. entered an appearance on behalf of Defendants and sought to vacate the default judgment. (Docket Entry 19.) This Court referred Plaintiffs' motion for a default judgment and Defendants' letter application to vacate default to Judge Lindsay on September 27, 2012.

Judge Lindsay's R&R recommends that the Court deny Plaintiffs' motion for a default judgment and grant Defendants' request to vacate the entry of a default. After a thorough analysis, the R&R concludes that although Defendants' default was willful, setting aside the default would not prejudice

Plaintiffs, that Defendants have set forth a potentially meritorious defense, and that equitable considerations favor vacating the entry of default.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of the date of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Lindsay's R&R to be comprehensive, well-reasoned and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Lindsay's R&R is ADOPTED in its entirety. Plaintiffs' motion for a default judgment is DENIED. Defendants' letter motion to vacate the entry of default is GRANTED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 19, 2013
Central Islip, NY